

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GUILLERMO ABREU,

Plaintiff,

-against-

KATHRYN MERCHAND and SCHNEIDER
NATIONAL CARRIERS, INC.,

Defendants.

24-CV-1334 (JGLC)

ORDER

JESSICA G. L. CLARKE, United States District Judge:

On February 22, 2024, Defendants filed a notice of removal of this action from the Supreme Court of New York, Bronx County, asserting removal was proper on the basis of diversity jurisdiction. *See* ECF No. 1.

Pursuant to Title 28, United States Code, Section 1441(a), a defendant may remove an action commenced in state court to a federal district court if the district court has original jurisdiction over the matter. If jurisdiction is predicated on diversity of citizenship, however, an action “may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2); *see Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 705 (2d Cir. 2019) (discussing the forum defendant rule).

Here, the Complaint alleges that Defendant Schneider National Carriers, Inc. is a citizen of the state of New York. Compl. ¶ 4; *see also Daimler AG v. Bauman*, 571 U.S. 117, 118 (2014) (company at home in its place of incorporation and principal place of business). Defendants appear to have been served, and have appeared and filed an answer, in the state court action. ECF No. 1.

Under Second Circuit law, the “forum defendant rule” appears to be procedural and, thus, waivable. *See Handelsman v. Bedford Vill. Assocs. L.P.*, 213 F.3d 48, 50 n.2 (2d Cir. 2000); *Bailey v. Texas Co.*, 47 F.2d 153, 154-55 (2d Cir. 1931) (L. Hand, J.). *But see Hurt v. Dow Chem. Co.*, 963 F.2d 1142, 1144-45 (8th Cir. 1992) (holding that the rule is jurisdictional and may not be waived).

Accordingly, IT IS HEREBY ORDERED that if Plaintiff wishes to invoke Section 1441(b)(2), Plaintiff must file a motion by **March 18, 2024**. Defendant must file their opposition by **April 1, 2024**, and Plaintiff must file their reply by **April 8, 2024**. IT IS FURTHER ORDERED that Defendant’s counsel must e-mail, fax or deliver by hand a copy of this Order to counsel for Plaintiff immediately upon receipt.

Finally, Defendants are directed to serve on Plaintiff a copy of this Order, and to file proof of such service on the docket, **within two business days of this Order**. Counsel for Plaintiff is directed to file a notice of appearance on the docket **within two business days of such service**.

SO ORDERED.

Dated: March 4, 2024
New York, New York



JESSICA G. L. CLARKE
United States District Judge